

FCC MAIL SECTION

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VIA FEDERAL EXPRESS

June 25, 1992

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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JUN 26 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY


Re: In the Matter of: The Telephone Consumer Protection Act of 1991
(CC Docket No. 92-90)

Dear Ms. Searcy:

Enclosed please find the original and 11 copies of Consumer Action's Reply Comments in the above-referenced proceeding.

Should any questions arise in connection with this matter, please contact me at (415) 777-9648.

Very truly yours,



Ken McEldowney
Executive Director

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

FCC MAIL SECTION
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In the Matter of)

The Telephone Consumer Protection)
Act of 1991)

CC Docket No. 92-90

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CONSUMER ACTION'S REPLY COMMENTS

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

I. INTRODUCTION

Consumer Action (CA) welcomes the opportunity to reply to the opening comments filed in response to the FCC's proposed regulations issued to implement the Telephone Consumer Protection Act of 1991 (TCPA).

We were surprised by the opposition stated by many of the parties to a national "don't call" database. In our mind, the establishment of such a database was what Congress intended in passing the TCPA. As Senator Pressler noted on Nov. 27, 1991, "I introduced this legislation in response to the national outcry over the explosion of unsolicited telephone advertising...The effect of this legislation will be to prohibit cold calls by any telemarketer to the telephone of a consumer who has no connection or affiliation with that business and who affirmatively has taken action to prevent such calls."

Rep. Rinaldo added that "S. 1462 also directs the FCC to determine the most effective and efficient method of allowing telephone subscribers to avoid live telephone solicitation calls." Such comments were echoed by the other sponsors as well. The goal of the legislation was to make it possible for consumers to stop all telemarketing "cold calls" if that was their desire. None of the suggested alternatives to the national database would come close to achieving this goal.

A second concern is that the Commission's proposed rules, and comments by many of the parties, seek far too many exemptions to the requirements of the TCPA

for the spirit of the law to be upheld. The framers of the TCPA were quite clear on this issue as well. The nation's consumers expect that the TCPA will enable them to prevent interruptions from telemarketers.

Consumer Action believes that the FCC should authorize the creation of a National Telemarketing Center (NTC) database that would contain the names and phone numbers of consumers who do not wish to receive any kind of telephone solicitations. If anything, the opening comments by other parties strengthened our position. None of the proposed alternatives will achieve the goal of the legislation--permitting consumers to prevent telemarketing "cold calls."

The Center, as envisioned by CA, would be authorized by the FCC but run by a board made up of industry and consumer representatives. Telemarketers would be required to submit their lists to the NTC. The Center would purge from these lists all names found in its National Telemarketing Database. National, state and area code specific lists could be submitted. The cost of such searches would be borne by the company submitting the list. There would be no charge to the consumer to be included in the database. Standardized notification language and forms would be developed by the Center for use in determining which consumers desired not to receive telemarketing calls.

Opening comments by many of the parties criticized a national database on the basis of: the cost that would be passed on to consumers; privacy concerns; that consumers would only have an "all or nothing" choice; that it would hamper the growth of the telemarketing industry; and that exemptions might result in consumer dissatisfaction.

These are legitimate concerns, but none of the commentators set forth any alternative that would satisfy the requirements of the TCPA. The alternative that was most mentioned was that of company-based don't call lists. Company-based lists do not work. Such lists are now being used and have not stemmed the rapid growth of

unwanted telemarketing calls. They don't work because in order to stop unwanted calls a consumer must contact each and every company that might want to call him or her at some point in the future.

Such a burden on individuals is completely contrary to the intent of the legislation that Congress passed. While legislators voiced support of the database program in Florida there was criticism that consumers had to incur cost to be placed on the don't call list. A program that relied on company-specific lists would require considerable expenditures by consumers on postage and long distance telephone calls to reach even a fraction of the companies that are involved in telemarketing.

In terms of the cost of a national database, LeJeune Associates (which provides software for telemarketers who wish to comply with Florida telemarketing laws) provided an estimate. LeJeune said a national database would be profitable if telemarketers were charged \$35 a quarter for one area code; \$75 for a state; \$150 for a geographic region; or \$250 for a complete nationwide list. Some thought that the cost would be higher.

However, others noted that telemarketers would save money by use of such a database by avoiding those consumers who have said they did not wish to be contacted. For example, Time Warner stated that its cost per telemarketing call is about \$1.75-\$2.00. It seems clear that the savings to telemarketers from being better able to target their calls would more than offset fees for accessing the database.

The privacy concerns have no validity. The database that CA is recommending is one that telemarketers would not have access to. Rather, tapes would be submitted to the NTC to be purged of people who did not want to be called. The privacy of the database would be assured by standards that would be put in place by the NTC's industry/consumer board.

Even if telemarketers had access to the "don't call" database, safeguards could be put in place to insure the privacy of the people who had requested to be placed on

the list. Methods, such as "seeding of lists" are already being used, and the NTC board could be directed to adopt such policies as needed to protect the privacy of consumers within the database.

Concerns were also raised that a national database would create an "all or nothing situation" for consumers: they could either get no calls or all calls. Such an objection to the national database completely misses the point of the TCPA. Consumers are concerned over the sheer volume of telemarketing calls they are receiving. They want to stop "cold calls" regardless of from where they come.

Having your number in the national database does not restrict the ability of a consumer to use the telephone for telemarketing purposes. The proposed rules specifically permits calls from businesses to those consumers with whom there is an ongoing relationship. Further, a consumer in the database can still call any company they want to get information on products and services and make a purchase over the phone. But the choice to make the call is the consumer's not the telemarketer's.

The fear that the existence of a national database will hamper the growth of the legitimate telemarketing industry is unfounded. In fact, the lack of such a database is the main threat to such growth. Legislation passed Congress and similar bills are being considered in most of the state legislatures because large numbers of consumers do not wish to receive "cold calls." As long as consumers do not have an effective way to shut off such calls they will complain long and hard to their elected officials. The result will be much more restrictive legislation than TCPA.

The creation of a national database removes this barrier to the growth of the industry. Legitimate telemarketers can then concentrate their efforts on those consumers who do not have strong objections to such calls. Not only will such calls be more productive, they will not result in the demand for legislative action.

Finally, some parties stated that the exemptions to TCPA proposed by the FCC will create dissatisfaction on the part of consumers who choose to send their numbers to the national database. This is a concern of ours as well and in our opening comments we strongly urged the FCC to cut back on the exemptions they were proposing. But the fact remains that regardless of what decision the FCC makes on the proposed exemptions, the national database will reduce unwanted telemarketing calls far more than any other alternative.

CONCLUSION

Consumer Action strongly supports the TCPA. We believe that the spirit of the bill can best be achieved by the establishment of a National Telemarketing Database governed by a National Telemarketing Center and by restricting exemptions as much as possible.

Respectfully submitted,



Ken McEldowney
Executive Director
Consumer Action
116 New Montgomery Street, Suite 233
San Francisco, CA 94105

(415) 777-9648

June 25, 1992